IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:		**No. 23893-8-III**
	)	**(consolidated with**
JOHN COLL McLAUGHLIN,	**)**	**No. 23980-2-III)**
	)	
Appellant,	**)**	
	)	
and	**)**	**Division Three**
	)	
WENDEE LYNN McLAUGHLIN,	**)**	
	)	
Respondent.	**)**	**UNPUBLISHED OPINION**
	)	

SWEENEY, C.J.—John McLaughlin appeals from the measures taken by the superior court to enforce its dissolution decree. Specifically, the court imposed a lien on his lake property to secure payment of a judgment to equalize a property award. We conclude that the measures are well within the judge's discretionary authority, and we affirm.

FACTS

John and Wendee McLaughlin divorced in 2003. The dissolution decree awarded their business, Group Photographers Association, to John. Wendee received an

equalization judgment in the amount of $847,075. The decree ordered John to draw up a promissory note that was "reasonably secured." The security could include company stock to be held in trust and any available liens or deeds of trust. John was given 30 days to provide the secured promissory note or to calendar a motion in the family court to resolve any disputes. The couple decided to secure the note with stock.

John and Wendee disagreed as to the number of shares of stock to be pledged and for how long. John proposed 270 shares of stock with a dollar value significantly higher than the amount of the debt. He wanted the stocks continuously released as he paid down the debt. Wendee wanted 860 shares of stock—enough to convey a controlling interest in the company—not to be released until the entire debt was paid. She argued that her security should not depend on the stocks' retaining their current value, and that a minority interest would be less marketable if she had to foreclose.

The parties agreed, however, that the stock dividends should be part of the agreement. John proposed that all the dividends be held in trust. Wendee proposed that 75 percent of the dividends would be distributed to her to pay down the debt. John's expert agreed to this.

The commissioner held a hearing on August 26, 2004, to "fill in the blanks" of what the parties had already agreed to. On the same date, the court entered an order

fixing the number of shares at 575—a controlling interest—to be held in trust until the debt was paid. The order uses the phrase, "per the attached stock pledge." Clerk's Papers (CP) at 53. But the order also instructs the parties to complete a stock pledge agreement within 45 days. On September 20, Wendee's expert sent John an agreement to sign. It reflected the commissioner's ruling as to the number of stocks and release conditions as well as the parties' agreement to distribute dividends to Wendee.

John refused to sign. He objected that the dividends transfer exceeded the authority of both the August 26 order and the decree. He denied having previously agreed to the dividend distribution. And he argued that the August 26 order required him to sign an agreement that was "attached." No agreement was attached. No agreement was, therefore, what he concluded he had to sign, and the order was void.

Four months after the August 26 order and more than a year after the decree, Wendee moved to hold John in contempt for various violations of the decree, including his refusal to comply with the August 26 order. The commissioner agreed and held John in contempt and assessed him $750 in attorney fees. The court found that John acted in bad faith by refusing to execute the stock pledge. It permitted John to purge the contempt by signing the agreement.

John moved for revision. The revision judge upheld the contempt order. The

judge found that the commissioner clearly instructed John to cooperate in preparing a security agreement and to sign it within 45 days. The judge accepted the unrebutted declaration of Wendee's expert that John's former lawyer had agreed to the terms of Wendee's September 20 proposal and that John ignored "repeated entreaties . . . throughout the remainder of spring and summer" to complete an agreement. Report of Proceedings at 25. The court accepted the same unrebutted declaration that the parties had agreed on the 75 percent dividend distribution. The judge also concluded that paying down the debt with dividends was within the terms of the dissolution decree. The court denied revision of the stock pledge agreement.

The commissioner awarded Wendee a deed of trust on John's lake cabin worth around $400,000 after the stock security agreement negotiations broke down.

John appeals the contempt order and the award of the deed of trust to secure the equalization payment.

DISCUSSION

Contempt

John argues that an order underlying a contempt ruling must be strictly construed. So here, the commissioner's August 26 order must be clear enough on its face to leave no doubt as to its meaning. He contends the order is vague and unintelligible because it

refers to an attached agreement but none is attached. John claims he could not, then, discern from the face of the order what he had to do. By August 26, he argues, four competing agreement proposals were on file. He also takes issue with the proposed distribution to Wendee of stock dividends, because it is not part of any of the proposed orders on file and is contrary to the dissolution decree.

Wendee responds that both parties understood that the "attached" order referred to was the one the experts were to prepare within 45 days of the hearing. As to the dividend agreement, Wendee contends the commissioner's order does not address it because the commissioner was asked to rule only on those issues still in dispute—to wit, the number of stocks pledged and whether to hold them until the entire debt was paid. The dividend distribution was not disputed. As to conflict with the decree, Wendee asserts that the decree contains no specifics about the security. But, she argues that it is self-evident that stocks conveying less than a controlling interest and without the dividends create no security at all.

Wendee argues that, if John did not understand the commissioner's order, he should have asked for clarification; if he objected to it, he should have sought review. Instead, he simply ignored the order and refused to do anything. It was this recalcitrance that was the basis for the contempt ruling, not his failure to sign a specific agreement.

A contempt sanction is within the sound discretion of the issuing court. We will not disturb it on appeal absent a showing of an abuse of discretion. *Schuster v. Schuster*, 90 Wn.2d 626, 630, 585 P.2d 130 (1978); *In re Marriage of Humphreys*, 79 Wn. App. 596, 599, 903 P.2d 1012 (1995). Discretion is abused if the findings are not supported by the record, if the findings do not support the conclusions, or if the decision is based on an incorrect standard of law. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). This court will uphold a contempt order on appeal "if any proper basis can be found." *Graves v. Duerden*, 51 Wn. App. 642, 647, 754 P.2d 1027 (1988).

We review the superior court judge's order, not the commissioner's order, following a motion to revise. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). The superior court judge reviews the commissioner's record de novo unless the commissioner heard live testimony. *In re Marriage of Moody*, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999). The judge reviews the commissioner's findings of fact for substantial evidence and the conclusions of law de novo. *In re Marriage of Dodd*, 120 Wn. App. 638, 643, 86 P.3d 801 (2004). The revision court has complete jurisdiction over the case and can make its own findings of fact and draw its own conclusions. *Id.* at 644.

Here, the commissioner did not take live testimony. Therefore, the revision court

could make its own findings and conclusions and affirm the commissioner on a different basis. In turn, we will uphold the revision court if we find any proper basis in the record. *Graves*, 51 Wn. App. at 647.

Courts have statutory contempt powers. They are codified as chapter 7.21 RCW. Contempt includes the disobedience of any lawful judgment, decree, or court order. RCW 7.21.010(1)(b); *Humphreys*, 79 Wn. App. at 599. The sanction may be either punitive or remedial, i.e., coercive. RCW 7.21.010(2), (3).

A constitutional court also has inherent contempt powers, both to enforce its orders and to punish noncompliance. *Keller v. Keller*, 52 Wn.2d 84, 86, 88, 323 P.2d 231 (1958). This inherent contempt power is what the superior court exercised here.

Contempt proceedings are a time-honored and judicially approved way to enforce property settlements in dissolution decrees. *Decker v. Decker*, 52 Wn.2d 456, 465, 326 P.2d 332 (1958); *Graves*, 51 Wn. App. at 650. It is a legitimate exercise of the court's inherent power to enforce the decree, rather than a punishment for violating a specific provision. *Graves*, 51 Wn. App. at 649-50 (citing *Keller*, 52 Wn.2d at 86).

John is correct that, in reviewing a contempt order, the court will not expand the plain meaning of the terms of a decree as read in the context of the litigation. *State v. Int'l Typographical Union*, 57 Wn.2d 151, 158, 356 P.2d 6 (1960). This does not help

John, however. He was in continuing contempt of the December 2003 dissolution decree which orders him to provide reasonable security to Wendee. The court ordered security in general terms. This should have made compliance easier. But instead John did nothing.

Neither the commissioner nor the revision court believed John's claim that issues remained unresolved and he did not know what the court was ordering him to do. This was the purpose of the August 26 hearing. The commissioner addressed those issues that remained in dispute. They did not include the dividends agreement. Both parties understood that an "attached" order would be prepared cooperatively by both parties' experts after the hearing. The resulting order included the terms specified by the commissioner regarding the number of shares to be pledged and the conditions of their release. The order also included terms the parties had already agreed to, such as applying dividends to paying down the debt.

The disobedience meriting the contempt order here was not John's alleged inability to grasp the specifics of the order. The contempt was in ignoring the order altogether and refusing to comply with the dissolution decree.

Award of Dividends

John next contends that the court unlawfully modified the property division

provisions of the dissolution decree by ordering John to give Wendee 75 percent of his dividends. This, he contends, was arbitrary and contrary to statute. He reasons that an award of property includes all profits derived from the property; stocks are property, and dividends are profits derived; and the decree awarded all the stock to John and none to Wendee. Therefore, he concludes, the court unlawfully modified the decree when it ordered John to give Wendee 75 percent of his stock dividends.

Wendee responds that the parties, not the commissioner, came up with the dividend arrangement and that John's belated objections were a ploy to defeat the order of the court.

Interpreting a dissolution decree involves questions of law that we review de novo. *Stokes v. Polley*, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001).

The decree instructs these parties to file a security agreement within 30 days. The decree does not require security only if John becomes delinquent in his payments. It anticipates that the parties might need help and provides for the court to intervene. The decree instructs them to calendar a motion for the court to resolve any disputes if they cannot agree. The decree necessarily requires the court to resolve details that might come before it by not specifying details of the security agreement.

The parties could not agree. The commissioner therefore carried out the terms of

the decree by resolving the remaining disputes. The dividend pledge was not a disputed element of the motion before the commissioner. John first proposed that all the dividends on the pledged stocks should be held in trust. His lawyer then accepted Wendee's expert's suggestion to apply these dividends to the debt as an alternative to holding them in trust. Nothing in the decree limits the sources of funds from which John can pay the judgment. The commissioner did not modify the decree.

Finally, John challenges the foundation for awarding the deed of trust. He contends there is no articulable economic basis. He had offered stock worth $2.3 million to secure a debt of $675,000. Wendee offered no evidence, he contends, that the stock was not sufficient security, and she produced no evidence as to the value of John's interest in the cabin. He believes the court ordered the deed of trust to coerce him into signing a stock agreement that he perceived as exceeding the court's authority. Wendee responds that the commissioner acted within his discretion to arrange for alternative security as provided in the decree. We agree.

A stock pledge could serve as security only if the parties agreed to it. Once it became obvious this was not going to happen, the court acted appropriately and within its discretion. The commissioner correctly abandoned the stock pledge idea and selected an alternative form of security from those suggested in the decree. The decree expressly

provides for deeds of trust as alternative security for this judgment.

The commissioner and superior court judge here acted appropriately in invoking the enforcement powers inherent in all constitutional courts to enforce its lawful orders.

Attorney Fees

The court may order a person found in contempt of court to pay for losses suffered as a result of the contempt, including costs incurred in connection with the contempt proceeding. RCW 7.21.030(3). The trial court awarded Wendee fees. She is also entitled to fees on appeal upon compliance with RAP 18.1(c). *Graves*, 51 Wn. App. at 651.

We affirm the superior court and award Wendee attorney fees.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, C.J.

WE CONCUR:

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Schultheis, J.

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Brown, J.